



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद
सीमा शुल्क भवन, आल इंडीया रेडीओ के बाजू में, नवरंगपुरा, अहमदाबाद 380009
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निबन्धित पावती डाक द्वारा / By SPEED POST A.D.

फा. सं./ F. No.: VIII/10-12/Pr.Commr/O&A/2024-25

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आदेश की तारीख/Date of Order: 20.11.2024
जारी करने की तारीख/Date of Issue: 20.11.2024

द्वारा पारित/Passed by:-

शिव कुमार शर्मा, प्रधान आयुक्त
Shiv Kumar Sharma, Principal Commissioner

मूल आदेश संख्या :

Order-In-Original No: AHM-CUSTM-000-PR.COMMR-54-2024-25 dated 20.11.2024 in the case of M/s FMC India Private Limited (IEC No. 0300037830) having their registered office situated at TCG Financial Centre, 2nd Floor, Plot No. C 53, Block G, Bandra Kurla Complex, Bandra (East), Mumbai, Maharashtra- 400098.

- 1 जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।
1. This copy is granted free of charge for private use of the person(s) to whom it is sent.
2. इस आदेश से असंतुष्ट कोई भी व्यक्ति इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, दुसरी मंज़िल, बहुमाली भवन, गिरिधर नगर पुल के बाजू में, गिरिधर नगर, असारवा, अहमदाबाद-380 004 को सम्बोधित होनी चाहिए।
2. Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Girdhar Nagar, Asarwa, Ahmedabad - 380004.
3. उक्त अपील प्रारूप सं. सी.ए.3 में दाखिल की जानी चाहिए। उसपर सीमा शुल्क (अपील) नियमावली, 1982 के नियम 3 के उप नियम (2) में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील

को चार प्रतियों में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ (उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए)। अपील से सम्बंधित सभी दस्तावेज भी चार प्रतियों में अंग्रेषित किए जाने चाहिए।

3. The Appeal should be filed in Form No. C.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Customs (Appeals) Rules, 1982. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.
4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं, चार प्रतियों में दाखिल की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएंगी (उनमें से कम से कम एक प्रमाणित प्रति होगी)।
4. The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)
5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।
5. The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.
6. केंद्रीय सीमा शुल्क अधिनियम, 1962 की धारा 129 ऐ के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।
6. The prescribed fee under the provisions of Section 129A of the Customs Act, 1962 shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.
7. इस आदेश के विरुद्ध सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण में शुल्क के 7.5% जहां शुल्क अथवा शुल्क एवं जुर्माना का विवाद है अथवा जुर्माना जहां शीर्ष जुर्माना के बारे में विवाद है उसका भुक्तान करके अपील की जा सकती है।
7. An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute".
8. न्यायालय शुल्क अधिनियम, 1870 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर उपयुक्त न्यायालय शुल्क टिकट लगा होना चाहिए।
8. The copy of this order attached therein should bear an appropriate court fee stamp as prescribed under the Court Fees Act, 1870.

Sub: Show Cause Notice F.No. VIII/10-12/Pr.Commr/O&A/2024-25 dated 23.08.2024 issued by the Principal Commissioner, Customs, Ahmedabad to M/s FMC India Private Limited (IEC No. 0300037830) having their registered office situated at TCG Financial Centre, 2nd Floor, Plot No. C 53, Block G, Bandra Kurla Complex, Bandra (East), Mumbai, Maharashtra- 400098

Brief facts of the case:

1.1. Specific intelligence was received by Directorate of Revenue Intelligence, DRI (MZU), Mumbai that an importer M/s FMC India Private Limited (IEC No. 0300037830) (hereinafter to be refereed as the 'FIPL' or 'the importer' for the sake of brevity), having

their registered office situated at TCG Financial Centre, 2nd Floor, Plot No. C 53, Block G, Bandra Kurla Complex, Bandra (East), Mumbai, Maharashtra- 400098, engaged in the business of import and manufacturing of chemicals including various insecticides, pesticides, herbicides etc., is importing from their related supplier M/s FMC Singapore and others, by resorting to under-valuation and, thereby, evading the applicable customs duty.

1.2. Intelligence suggested that the said importer has changed their billing practice for their imported goods and thereby evading payment of appropriate duty. They changed the basis of billing practice of the product from actual purity (actual concentration) to standard purity (fixed concentration) in respect of certain active ingredients in the product. Initially, the billing was done on the basis of the actual concentration of certain active ingredient in the product. However, later the practice was changed and billing was being done on the basis of a fixed concentration of certain active ingredient in the product. The fixed concentration of active ingredient chosen for the purpose of valuation was generally less than the actual concentration of active ingredient, which decreased the actual value of the imported product.

1.3. For instance, in one such product 'Carbosulfan', company used to bill to its buyers on the basis of actual concentration of 'Carbosulfan' which is the active ingredient in the product but this method was changed and the company fixed the price of its product on the basis of certain fixed concentration of 'Carbosulfan', which is less than actual concentration, thereby decreasing the assessable value of the product which led to revenue loss. This is illustrated under Table-01 below:

Table-01

Amount (In Rs.)

Product	Carbosulfan						
Quantity	1200 Kgs						
Actual purity (% of active ingredient in the product)	Standard purity (% of active ingredient used for invoicing)	Difference in Purity of active ingredient	Unit Price (as per standard purity)	Assessable Value (as per standard purity)	Qty based On purity Difference (In Kgs)	Assessable Value (as per actual purity)	Difference in Assessable Value
92.80%	90.80%	2.00%	1,034	12,40,800	24	12,65,616	24,816

1.4 Accordingly, an investigation was initiated by the Directorate of Revenue Intelligence (DRI), Mumbai Zonal Unit (MZU), 13, Sir Vithaldas Thackersey Marg, New Marine Lines, Mumbai-400020 (hereinafter referred to as DRI), against the said importer.

2. Action taken on intelligence

2.1. Based on above intelligence, summons were issued to various persons associated with the company and their statements were recorded under Section 108 of the Customs Act, 1962, as discussed below:

Recording of Statements

2.2. Statement dated 06.09.2022 of **Shri Anurag Srivastava**, then India Finance Director and current, Chief Operating Officer (COO) of M/s FMC India Private Limited, was recorded under Section 108 of the Customs Act, 1962 wherein he, inter alia, stated that:

- (a) On being asked he stated that FIPL is into import, manufacturing, marketing and sales of various insecticides, fungicides and herbicides and plant health products. FMC is headquartered at Philadelphia, USA and have their

regional headquarter for Asia Pacific in Singapore. Majority of Technicals i.e. raw materials for formulation of product in India are imported. They also have some local purchases of finished goods for selling and marketing in India. Most of the suppliers for imported Technicals are their related entities for which they have SVB registration with the Customs.

(b) On being asked whether the imported Technical Grade Insecticides are sold in the domestic market directly or after making formulation of the same, he stated that a very small/negligible quantity of the imported Technicals are being sold in the domestic market and most of the imported Technicals are used for making formulations thereof and are consequently sold in the market.

(c) On being asked about the license requirements for import of various insecticides, fungicides and herbicides Technicals imported by FIPL, he stated that for the import of various insecticides, fungicides and herbicides there is mandatory registration requirement to be registered with the Central Insecticides Board (CIB) and then only one can import such products.

(d) On being asked about any quality standard like minimum or maximum purity prescribed by the CIB Registration for the import of various Technicals of insecticides, fungicides and herbicides and its significance, he affirmed and stated that there are distinct minimum or maximum purity standards prescribed by the CIB Registration for the import of various Technicals of insecticides, fungicides and herbicides. It is based on the quality of technical produced by the plant from where the technical is being sourced. By prescribing such standards, CIB tries to regulate the quality of product imported into the country.

(e) On being asked about meaning of active ingredient and how its purity influences the value and output of the goods, he stated that active ingredients are the chemicals which control the pest or disease in any of the crop protection products i.e. insecticides, fungicides and herbicides. Higher the purity of Technical means higher the content of active ingredient in any insecticides, fungicides and herbicides. Relatively the material with higher purity will have higher available technical for use and hence, will possibly have higher value and a higher output yield in formulation.

(f) On being asked to explain how FIPL is determining the price for the imported goods he stated that:

- i. The prices to be paid by FMC affiliates when purchasing tangible goods from associated enterprises, for further distribution in their respective local markets, are set in such a way that they aim to reflect the prices that independent enterprises transact with each other. Another important aspect of the transfer pricing policy for this type of controlled transactions within FMC is the fact that the arm's length principle is not applied on a transaction-by-transaction basis, but rather on an aggregate basis.
- ii. Traditionally, FMC has been following pricing methodology based on the Purity of active ingredient i.e. they used to arrive at the actual quantity of active ingredient on the basis of purity for example if a technical of 1000 Kg is imported with the purity of 98.5% then the actual content of active ingredient will be 985 Kgs and the value of such 1000 Kgs Technical will be arrived at after proportionately valuing the 985 Kgs actual content of the active ingredient with price of 100% pure active ingredient per Kg.
- iii. However, after being apprised about the issue that the pricing for import made by FIPL has not been done on the basis of methodology stated above and on being shown invoice no 92600214 dated

17/04/2020 and 94500138 dated 12/05/2020 wherein the product Chlorantraniliprole has been valued at uniform prices per kg, he stated that that practice which was traditionally followed by them got missed probably due to an over sight in the process of New Platform Implementation across globe which they did during early 2020.

(g) On being asked the basis taken by FIPL for valuing the importing goods for the period 2020-2022 he stated that during the above period for 2020-2022 the pricing for imported goods has been calculated on the basis of standard purity as updated in the system arrived on the basis of Transfer Price list instead of the actual ingredient purity which resulted in variance on the total value of the imported Technical.

(h) Further, he stated that this miss in calculating the correct values is purely an oversight in the process of New Platform migration S4- Hana which they will rectify by re-working on all the imports undertaken by them since this period. This oversight happened due to people change, Organization Re-Structuring and lack of co-ordination among multiple functions during the process of implementation of new system and business processes during which this aspect was completely missed out. He further stated that they have voluntarily reworked the entire working for the above period and made the necessary differential payment along with the Interest.

2.3. Further, statement dated 07.02.2024 of **Shri Anurag Srivastava**, then India Finance Director and current, Chief Operating Officer (COO) of M/s FMC India Private Limited, was recorded under Section 108 of the Customs Act, 1962 wherein he, inter alia, stated that :

(a) On being shown his statement dated 06.09.2022, he stated that he agreed with the content of the said statement.

(b) On being informed that FIPL has voluntarily deposited duty along with interest amount of Rs.11,54,39,109/- for the period March 2020 to July 2022 towards their liability for differential percentage of Active Ingredient over and above standard reference percentage in imported insecticides and being asked about the liability arising due to differential percentage of Active Ingredient over and above standard reference percentage in imported insecticides before March 2020 and after July 2022 till date, he stated that FIPL will ascertain liability arising due to differential percentage of Active Ingredient over and above standard reference percentage in imported insecticides before March 2020 and after July 2022 till date, if any and will deposit it along with interest.

(c) On being asked about the statement dated 06.09.2022 where he had stated that due to oversight in the process of New Platform implementation across globe, practice which was traditionally followed by FIPL got missed and the same shall be rectified and asked whether such rectification has been carried out by FIPL and now the transaction value of imported goods post July 2022 is as per Transfer Pricing based on Actual Active Ingredient present in Insecticides and is not based on standard unit price, he gave affirmation and stated that FIPL shall verify all imports post July 2022 and if any liability arises they shall pay it along with interest.

(d) He further stated that, this miss in calculating the correct values is purely an oversight in the process of New Platform migration S4- Hana. This oversight happened due to people change, Organization Re-Structuring and lack of co-ordination among multiple functions during the process of implementation of new system and business processes during which this aspect was completely missed out. They had voluntarily reworked the entire working for the period March 2020 to July 2022 and made the necessary differential payment along

with the Interest and they shall rework the entire working for the period before March 2020 and post July 2022 and will made the necessary differential payment along with the Interest, if any.

2.4. The Deputy Commissioner, Special Valuation Branch (SVB), Air Cargo Complex (ACC), Bengaluru vide File No. C. No. S-44/03/48/2016 SVB-BNG having DGOV No. 0011804 issued Investigation Report (New Case) No. 10/2019 dated 18.02.2019 regarding determination of assessable value of goods imported by M/s FMC India Private Limited from its related supplier whereby it was stated that the goods are supplied by the related foreign supplier on the basis of transfer price arrangement fixed annually on an agreed basis and it has no linkages on volume of import as it is same for whatever quantity imported. However, if there is any change in the method of invoicing, terms of relationship or any other material facts affecting the valuation of goods under the CVR, 2007 read with Section 14(1) of the Customs Act, 1962, the importer shall inform the same to the Special Valuation Branch immediately so as to enable the review of the decision in force.

Transfer Pricing (TP)

2.5. M/s FMC India Private Limited vide letter dated 07.09.2022 and email dated 14.06.2024 submitted Transfer Pricing (TP) List for the year 2019 to 2023 (**RUD-03**). The said transfer pricing list is based on Standard Purity of active ingredient present in the product and is listed under Table-02 below.

Table-02

Year	2019		2020		2021		2022		2023	
TECHNICAL NAME	Purity %	TP Price in Rs.	Purity %	TP Price in Rs.	Purity %	TP Price in Rs.	Purity %	TP Price in Rs.	Purity %	TP Price in Rs.
BIFENTHRIN	97.60	2458.38	97.60	-	97.60	-	97.60	-	97.60	-
CARBOSULFAN	90.80	1047.30	90.80	1003.85	90.80	1033.60	90.80	1046.70	90.80	1557.85
CLOMAZONE	93.80	1249.78	93.80	1237.51	93.80	1274.19	93.80	1290.34	93.80	1375.92
CLOTHIANIDIN	98.00	-	-	-	-	-	-	-	98.00	2460
FLUTHIACET METHYL	98.80	36903.35	98.80	38489.98	98.80	-	98.80	31130.61	98.80	-
METAMIFOP	98.50	8527.81	98.50	9002	98.50	-	98.50	-	98.50	-
METSULFURON METHYL	100	-	100	-	100	-	100	3964.45	100	4227.74
RYNAXYPYR (CHLORANTRANILIPROLE)	97.50	-	97.50	23806.52 (Revision -1) 23905.20 (Revised-2)	97.50	24512.05	97.50	23862.54	97.50	-
CYAZYPYR (CYANTRANILIPROLE)	97.00	-	97.00	37797.83	97.00	38918.00	97.00	30934.70	97.00	31977.32 (Revision -1) 32986.87 (Revision -2)
SULFENTRAZONE	92	2533.8	92.00	-	92.00	-	92.00	-	92.00	-

2.6. As evident above, the foreign suppliers of FIPL are related in terms of Rule 2(2) of the CVR, 2007. The goods supplied by the related foreign suppliers is on the basis of transfer price arrangement as mentioned above. The transfer pricing was fixed based on

Standard Purity of active ingredient/ingredient of the Insecticide of Technical grade ('Technical' for short), means the actual value of imported goods was decided based on actual percentage of the active ingredient/ingredient based on rate fixed on Standard Purity. However, FIPL has discontinued the practice of fixing the price based on actual purity and made the transfer pricing rates as actual rate per unit without considering the actual purity of the active ingredient/ingredient in contravention to their submission at the time of investigation by SVB and final SVB order.

3. Legal Provisions

Relevant provisions of law relating to import of goods in general, the policy and rules relating to the import under the provisions of the Customs Act, 1962 and other laws for the time being in force are summarized as under:

3.1. The Customs Act, 1962:

i) **Section 2. Definitions:** In this Act, unless the context otherwise requires-

(2) "assessment" means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act) or under any other law for the time being in force, with reference to-

- (a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;
- (b) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;
- (c) exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act or under the Customs Tariff Act or under any other law for the time being in force;
- (d) the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;
- (e) the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods;
- (f) any other specific factor which affects the duty, tax, cess or any other sum payable on such goods, and includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil;

(36) "rules" means the rules made by the Central Government under any provision of this Act;

(41) "value", in relation to any goods, means the value thereof determined in accordance with the provisions of sub-section (1) or sub-section (2) of section 14;

(26) "importer", in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner, beneficial owner or any person holding out to be the importer.

ii) **Section 14. Valuation of goods.**

- (1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not

related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf:

Provided that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf.

Provided further that the rules made in this behalf may provide for,-

- (i) the circumstances in which the buyer and the seller shall be deemed to be related;*
- (ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;*
- (iii) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section:*
- (iv) the additional obligations of the importer in respect of any class of imported goods and the checks to be exercised, including the circumstances and manner of exercising thereof, as the Board may specify, where, the Board has reason to believe that the value of such goods may not be declared truthfully or accurately, having regard to the trend of declared value of such goods or any other relevant criteria.*

iii) Section 17. Assessment of Duty:

(1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

(2) The proper officer may verify the entries made under section 46 or section 50 and the self-assessment of goods referred to in sub-section (1) and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.

Provided that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.

(3) For the purposes of verification under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

iv) Section 28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded

(4). Where any duty has not been levied or not paid or has been short-levied or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, by reason of –

- a) collusion; or
- b) any wilful mis-statement; or
- c) suppression of facts

by the importer, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

(5) Where any duty has not been levied or not paid or has been short-levied or short paid or the interest has not been charged or has been part-paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub-section (4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to fifteen per cent of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing.

(6) Where the importer or the exporter or the agent or the employee of the importer or the exporter, as the case may be, has paid duty with interest and penalty under sub-section (5), the proper officer shall determine the amount of duty or interest and on determination, if the proper officer is of the opinion–

(i) that the duty with interest and penalty has been paid in full, then, the proceedings in respect of such person or other persons to whom the notice is served under sub-section (1) or sub-section (4), shall, without prejudice to the provisions of sections 135, 135A and 140 be deemed to be conclusive as to the matters stated therein; or

(ii) that the duty with interest and penalty that has been paid falls short of the amount actually payable, then, the proper officer shall proceed to issue the notice as provided for in clause (a) of sub-section (1) in respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of two years shall be computed from the date of receipt of information under sub-section (5).

v) Section 28AA. Interest on delayed payment of duty

(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

vi) Section 46. Entry of goods on importation:

(1) The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting electronically on the

customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed:

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically on the customs automated system, allow an entry to be presented in any other manner:

Provided further that if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof:

(a) to examine the goods in the presence of an officer of customs, or

(b) to deposit the goods in a public warehouse appointed under section 57 without warehousing the same.

(2) Save as otherwise permitted by the proper officer, a bill of entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.

(3) The importer shall present the bill of entry under sub-section (1) before the end of the day (including holidays) preceding the day on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing:

Provided that the Board may, in such cases as it may deem fit, prescribe different time limits for presentation of the bill of entry, which shall not be later than the end of the day of such arrival:

Provided further that a bill of entry may be presented at any time not exceeding thirty days prior to] the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India:

Provided also that where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for late presentation of the bill of entry as may be prescribed.

(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.

(4A) The importer who presents a bill of entry shall ensure the following, namely:

(a) the accuracy and completeness of the information given therein;

(b) the authenticity and validity of any document supporting it; and

(c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

(5) If the proper officer is satisfied that the interests of revenue are not prejudicially affected and that there was no fraudulent intention, he may permit substitution of a bill of entry for home consumption for a bill of entry for warehousing or vice versa.

vii) Section 111. Confiscation of improperly imported goods, etc.

The following goods brought from a place outside India shall be liable to confiscation:

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under

transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;

viii) Section 112. Penalty for improper importation of goods, etc:

Any person,

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten percent of the duty sought to be evaded or five thousand rupees, whichever is higher:

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five percent of the penalty so determined;

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty [not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest.

ix) Section 114A. Penalty for short-levy or non-levy of duty in certain cases:

Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:

Provided that where such duty or interest, as the case may be, as determined under sub-section (8) of section 28, and the interest payable thereon under section 28AA, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable

to be paid by such person under this section shall be twenty-five per cent of the duty or interest, as the case may be, so determined.

x) Section 114AA. Penalty for use of false and incorrect material:

If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

xi) Section 124. Issue of show cause notice before confiscation of goods, etc.

No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person—

(a) is given a notice in writing with the prior approval of the officer of Customs not below the rank of an Assistant Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter:

Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.

Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed.

3.2. Customs Valuation (Determination of Value of Imported Goods) Rules, 2007:

i) Rule 2. Definitions:

(2) For the purpose of these rules, persons shall be deemed to be "related" only if -

- (i) they are officers or directors of one another's businesses;*
- (ii) they are legally recognised partners in business;*
- (iii) they are employer and employee;*
- (iv) any person directly or indirectly owns, controls or holds five per cent or more of the outstanding voting stock or shares of both of them;*
- (v) one of them directly or indirectly controls the other;*
- (vi) both of them are directly or indirectly controlled by a third person;*
- (vii) together they directly or indirectly control a third person; or*
- (viii) they are members of the same family.*

ii) Rule 3. Determination of the method of valuation:

(1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;

(2) Value of imported goods under sub-rule (1) shall be accepted:

Provided that –

(a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which –

(i) are imposed or required by law or by the public authorities in India; or

(ii) limit the geographical area in which the goods may be resold; or

(iii) do not substantially affect the value of the goods;

(b) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;

(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and

(d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.

(3) (a) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.

(b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time.

(i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;

(ii) the deductive value for identical goods or similar goods;

(iii) the computed value for identical goods or similar goods:

Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related;

(c) substitute values shall not be established under the provisions of clause (b) of this sub-rule.

(4) if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9.

iii) **Rule 4. Transaction value of identical goods: -**

(1) (a) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued;

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(b) In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods.

(c) Where no sale referred to in clause (b) of sub-rule (1), is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the

adjustments, whether such adjustment leads to an increase or decrease in the value.

(2) Where the costs and charges referred to in sub-rule (2) of rule 10 of these rules are included in the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport.

(3) In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.

iv) **Rule 5. Transaction value of similar goods :**

(1) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued:

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(2) The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, *mutatis mutandis*, also apply in respect of similar goods.

v) **Rule 6. Determination of value where value cannot be determined under rules 3, 4 and 5. -**

If the value of imported goods cannot be determined under the provisions of rules 3, 4 and 5, the value shall be determined under the provisions of rule 7 or, when the value cannot be determined under that rule, under rule 8.

Provided that at the request of the importer, and with the approval of the proper officer, the order of application of rules 7 and 8 shall be reversed.

vi) **Rule 7. Deductive value:**

(1) Subject to the provisions of rule 3, if the goods being valued or identical or similar imported goods are sold in India, in the condition as imported at or about the time at which the declaration for determination of value is presented, the value of imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons who are not related to the sellers in India, subject to the following deductions : -

(i) either the commission usually paid or agreed to be paid or the additions usually made for profits and general expenses in connection with sales in India of imported goods of the same class or kind;

(ii) the usual costs of transport and insurance and associated costs incurred within India;

(iii) the customs duties and other taxes payable in India by reason of importation or sale of the goods.

(2) If neither the imported goods nor identical nor similar imported goods are sold at or about the same time of importation of the goods being valued, the value of imported goods shall, subject otherwise to the provisions of sub-rule

(1), be based on the unit price at which the imported goods or identical or similar imported goods are sold in India, at the earliest date after importation but before the expiry of ninety days after such importation.

(3) (a) If neither the imported goods nor identical nor similar imported goods are sold in India in the condition as imported, then, the value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons who are not related to the seller in India.

(b) In such determination, due allowance shall be made for the value added by processing and the deductions provided for in items (i) to (iii) of sub-rule (1).

vii) Rule 10. Cost and services:

(1) In determining the transaction value, there shall be added to the price actually paid or payable for the imported goods, -

(a) the following to the extent they are incurred by the buyer but are not included in the price actually paid or payable for the imported goods, namely: -

- (i) commissions and brokerage, except buying commissions;
- (ii) the cost of containers which are treated as being one for customs purposes with the goods in question;
- (iii) the cost of packing whether for labour or materials;

(b) The value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of imported goods, to the extent that such value has not been included in the price actually paid or payable, namely: -

- (i) materials, components, parts and similar items incorporated in the imported goods;
- (ii) tools, dies, molds and similar items used in the production of the Imported goods;
- (iii) materials consumed in the production of the imported goods;
- (iv) engineering, development, art work, design work, and plans and sketches undertaken elsewhere than in India and necessary for the production of the imported goods;

(c) royalties and license fees related to the imported goods that the buyer is required to pay, directly or indirectly, as a condition of the sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;

(d) The value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues, directly or indirectly, to the seller;

(e) all other payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller to the extent that such payments are not included in the price actually paid or payable.

Explanation. - Where the royalty, license fee or any other payment for a process, whether patented or otherwise, is includible referred to in clauses (c) and (e), such charges shall be added to the price actually paid or payable for the imported goods, notwithstanding the fact that such goods may be subjected to the said process after importation of such goods.

(2) For the purposes of sub-section (1) of section 14 of the Customs Act, 1962 (52 of 1962) and these rules, the value of the imported goods shall be the value of such goods, and shall include -

(a) the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation;

(b) the cost of insurance to the place of importation:

Provided that where the cost referred to in clause (a) is not ascertainable, such cost shall be twenty per cent of the free on-board value of the goods:

Provided further that where the free on-board value of the goods is not ascertainable but the sum of free on-board value of the goods and the cost referred to in clause (b) is ascertainable, the cost referred to in clause (a) shall be twenty per cent of such sum:

Provided also that where the cost referred to in clause (b) is not ascertainable, such cost shall be 1.125% of free on-board value of the goods:

Provided also that where the free on-board value of the goods is not ascertainable but the sum of free on-board value of the goods and the cost referred to in clause (a) is ascertainable, the cost referred to in clause (b) shall be 1.125% of such sum:

Provided also that in the case of goods imported by air, where the cost referred to in clause (a) is ascertainable, such cost shall not exceed twenty per cent of free on-board value of the goods:

Provided also that in the case of goods imported by sea or air and transhipped to another customs station in India, the cost of insurance, transport, loading, unloading, handling charges associated with such transshipment shall be excluded.

Explanation - The cost of transport of the imported goods referred to in clause (a) includes the ship demurrage charges on chartered vessels, lighterage or barge charges.]

(3) Additions to the price actually paid or payable shall be made under this rule on the basis of objective and quantifiable data.

(4) No addition shall be made to the price actually paid or payable in determining the value of the imported goods except as provided for in this rule

viii) **Rule 11. Declaration by the importer**

(1) The importer or his agent shall furnish -

(a) a declaration disclosing full and accurate details relating to the value of imported goods; and

(b) any other statement, information or document including an invoice of the manufacturer or producer of the imported goods where the goods are imported from or through a person other than the manufacturer or producer, as considered necessary by the proper officer for determination of the value of imported goods under these rules.

(2) Nothing contained in these rules shall be construed as restricting or calling into question the right of the proper officer of customs to satisfy himself as

to the truth or accuracy of any statement, information, document or declaration presented for valuation purposes.

- (3) The provisions of the Customs Act, 1962 (52 of 1962) relating to confiscation, penalty and prosecution shall apply to cases where wrong declaration, information, statement or documents are furnished under these rules.

ix) Rule 12. Rejection of declared value:

(1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.

(2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

Explanation. -(1) For the removal of doubts, it is hereby declared that: -

(i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.

(ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.

(iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include -

(a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;

(b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;

(c) the sale involves special discounts limited to exclusive agents;

(d) the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;

(e) the non-declaration of parameters such as brand, grade, specifications that have relevance to value;

(f) the fraudulent or manipulated documents.

4. Discussion and Findings of Investigation

Valuation of imported goods

4.1. The FIPL vide affidavit dated 06.11.2018 given to SVB, Bengaluru stated that the goods are supplied by the related foreign supplier on the basis of transfer price arrangement and there is no supply of similar or identical goods by the related supplier to any other independent customer in India. All transactions between FIPL and its related foreign supplier is based on the same declared pricing policy. In case of any change in their pricing policy, they shall inform SVB, Bangalore for further necessary

action. These transfer prices are fixed annually and communicated by related suppliers on an agreed basis. This has no linkages with the volume of import. It is same for whatever quantity imported.

4.2. Based on the submissions made by FIPL, the Deputy Commissioner, Special Valuation Branch (SVB), Air Cargo Complex (ACC), Bengaluru vide File No. C. No. S-44/03/48/2016 SVB-BNG having DGOV No. 0011804 issued Investigation Report (New Case) No. 10/2019 dated 18.02.2019 regarding determination of assessable value of goods imported by M/s FMC India Private Limited from its related supplier whereby it was stated that the goods are supplied by the related foreign supplier on the basis of transfer price arrangement fixed annually on an agreed basis and it has no linkages on volume of import as it is same for whatever quantity imported. However, if there is any change in the method of invoicing, terms of relationship or any other material facts affecting the valuation of goods under the CVR, 2007 read with Section 14(1) of the Customs Act, 1962, the importer shall inform the same to the Special Valuation Branch immediately so as to enable the review of the decision in force.

4.3. M/s FMC India Private Limited submitted Transfer Pricing (TP) Price List for the year 2019 to 2023 is listed under Table-03:

Table-03

Year	2019		2020		2021		2022		2023	
TECHNICAL NAME	Purity %	TP Price in Rs.	Purity %	TP Price in Rs.	Purity %	TP Price in Rs.	Purity %	TP Price in Rs.	Purity %	TP Price in Rs.
BIFENTHRIN	97.60	2458.38	97.60	-	97.60	-	97.60	-	97.60	-
CARBOSULFAN	90.80	1047.30	90.80	1003.85	90.80	1033.60	90.80	1046.70	90.80	1557.85
CLOMAZONE	93.80	1249.78	93.80	1237.51	93.80	1274.19	93.80	1290.34	93.80	1375.92
CLOTHIANIDIN	98.00	-	-	-	-	-	-	-	98.00	2460
FLUTHIACET METHYL	98.80	36903.35	98.80	38489.98	98.80	-	98.80	31130.61	98.80	-
METAMIFOP	98.50	8527.81	98.50	9002	98.50	-	98.50	-	98.50	-
METSULFURON METHYL	100	-	100	-	100	-	100	3964.45	100	4227.74
RYNAXYPYR (CHLORANTRANILIPROLE)	97.50	-	97.50	23806.52 (Revision -1) 23905.20 (Revised-2)	97.50	24512.05	97.50	23862.54	97.50	-
CYAZYPYR (CYANTRANILIPROLE)	97.00	-	97.00	37797.83	97.00	38918.00	97.00	30934.70	97.00	31977.32 (Revision -1) 32986.87 (Revision -2)
SULFENTRAZONE	92	2533.8	92.00	-	92.00	-	92.00	-	92.00	-

4.4. For illustration purpose, the valuation that the importer had adopted at the time of import and the valuation that the importer had to adopt as per SVB order and Transfer Pricing is illustrated as below:

4.4.1. The FIPL had imported 20,000 kgs of Chlorantraniliprole Technical (also known as Rynaxypyr) having declared unit price of Rs.23,807/- per kgs at Nhava Sheva (INNSA1) through Home Consumption Bill of Entry No. 7403372 dated 06.04.2020 having Invoice No. 94500054 dated 17.03.2020.

4.4.2. As per Transfer Pricing for year 2020, the unit price of Chlorantraniliprole Technical is Rs.23,807/- per kgs at 97.5% Standard Purity i.e. one kilogram of

Chlorantraniliprole Technical of 97.5% purity is priced at Rs.23,807/-. That means, the price of goods having purity more than 97.5% will be accordingly higher. However, the FIPL valued the goods at Rs.47,61,30,405/- (23,807 * 20,000) without considering the actual purity of the imported goods.

- 4.4.3. The batch wise actual purity of the goods imported under said BE are listed under **Table-04** below. For Batch No. FEB20SHR31 having 1500 Kgs of said goods had actual purity of 98.18%. However, the goods were valued at Standard Purity of 97.50% at Transfer Pricing of Rs.23,807/- per kg i.e. 1500 kg of said batch was valued at Rs.3,57,09,780/-. However, the actual purity of the said batch is 98.18%, hence, the purity difference that has not been considered in value is 0.68% which turns out to be 10.2 kgs of active ingredient that has not being considered in value. Therefore, the value of quantity based on purity difference is Rs.2,42,827/- at Transfer Pricing of Rs.23,807/- per kg. Consequently, the re-determined value of 1500 kgs of said goods in Batch No. FEB20SHR31 is Rs.3,59,52,607/- and not Rs.3,57,09,780/-. Similarly, the value of quantity based on purity difference for all the batches imported under subject BE are as listed in **Table-04** below. As evident below, there is under-valuation of Rs.23,52,441/- in the subject BE.

Table-04

Sr. No.	Batch No.	Qty (Kgs)	Actual Purity (%)	Standard Purity (%)	Purity Diff (%)	Qty based on Purity Diff (Kgs)	Unit Price (Transfer Price) In Rs.	Value of Qty based on Purity Diff (In Rs.)	Declared Assessable Value as per Standard Purity (In Rs.)	Redetermined Assessable Value as per Actual Purity (In Rs.)
1	FEB20SHR 31	1500	98.18	97.50	0.68	10.2	23807	242827	35709780	35952607
2	FEB20SHR 32	1500	98.04	97.50	0.54	8.10	23807	192833	35709780	35902613
3	FEB20SHR 33	1600	98.03	97.50	0.53	8.48	23807	201879	38090432	38292311
4	FEB20SHR 34	1600	98.20	97.50	0.70	11.20	23807	266633	38090432	38357065
5	FEB20SHR 35	1600	98.11	97.50	0.61	9.76	23807	232352	38090432	38322784
6	FEB20SHR 36	1650	97.62	97.50	0.12	1.98	23807	47137	39280758	39327895
7	FEB20SHR 37	1600	98.11	97.50	0.61	9.76	23807	232352	38090432	38322784
8	FEB20SHR 38	1600	98.08	97.50	0.58	9.28	23807	220925	38090432	38311357
9	FEB20SHR 39	1650	98.01	97.50	0.51	8.42	23807	200332	39280758	39481090
10	FEB20SHR 40	1600	97.61	97.50	0.11	1.76	23807	41899	38090432	38132331
11	FEB20SHR 41	1650	98.07	97.50	0.57	9.41	23807	223900	39280758	39504658
12	FEB20SHR 42	1600	97.99	97.50	0.49	7.84	23807	186643	38090432	38277075
13	FEB20SHR 43	850	97.81	97.50	0.31	2.64	23807	62730	20235542	20298272
	TOTAL	20000				99		23,52,441	47,61,30,400	47,84,82,841

Calculation of duty and other liabilities:

4.5. The consignments imported in the past by FIPL as detailed in Annexure-A, were cleared by adopting method of invoicing where the goods were valued as per Standard Purity and not as per Actual Purity of active ingredient. Therefore, it appears that FIPL has resorted to mis-declaration in value i.e. under-valuation and cleared the goods without the applicable duty payment.

4.6. For the consignments imported in the name of FIPL through bills of entry detailed in Annexure-A and in view of the SVB Order and various statements recorded along with other evidences gathered, it appears that the value declared for the consignments

imported by FIPL were based on invoices where the Unit Price of product was as per Standard Purity as determined by FIPL annually with its related supplier whereas the unit price of the product should be based on actual purity wherever it is higher than the Standard Purity. Hence, the declared value in past consignments is not the correct value of the goods. Therefore, the invoices submitted at the time of the import of the goods appear to be incorrect document in terms of Rule 11 of the Customs Valuation (Determination of the Value of Imported Goods) Rules, 2007 (CVR, 2007).

4.7. Accordingly, the value of the impugned goods, as declared in respective bills of entry and as detailed in Annexure-A to this Show Cause Notice, imported into India in the name of FIPL from its related foreign suppliers, on the basis of which the said goods were assessed and allowed clearance, does not appear to be the true and actual Transaction Value of the said goods, in terms of the provisions of Section 14(1) of the Customs Act, 1962 read with provisions of Rule 3(1) of the Customs Valuation (Determination of the Value of Imported Goods) Rules, 2007 (hereinafter referred to as CVR, 2007).

4.8. The Transaction Value of the consignments imported in the name of FIPL, declared in respective bills of entry and as detailed in Annexure-A to this Show Cause Notice, which appears to be mis-declared, is required to be ascertained under the provisions of Section 14(1) of the Customs Act, 1962 read with provisions of Rule 3(1) of the CVR, 2007.

4.9. The correct Transaction Value of the consignments, as detailed in Annexure-A to this Show Cause Notice, for the purpose of Section 14(1) of the Customs Act, 1962 read with provisions of Rule 3(1) of the CVR, 2007, is as per Actual Purity of active ingredient of the product and not as per Standard Purity. The Transaction Value is required to be re-determined by adopting the methodology as illustrated above under Table-04 above i.e. it has to be re-determined as per Actual Purity of active ingredient of the product and that shall be the value for the determination of actual assessable value of goods imported.

4.10. Therefore, FIPL is liable to pay duty on the value of quantity based on purity difference. The duty liability is ascertained on the basis of re-determined assessable value as illustrated above. Consequently, the amount of differential duty i.e. duty not levied or paid on account of the above stated mis-declaration in value are as calculated in Annexure-A. Summary of the differential duty which was not levied or short levied on account of mis-declaration in value by FIPL is as listed under Table-05 below:

Table-05					Amount (In Rs.)
Sr. No.	Port Code	Port/ACC/ICD Name	Declared Assessable Value	Redetermined Assessable Value	Differential Duty
1	INBRC6	ICD Dashrath	32,19,66,34,250	32,40,93,26,344	6,58,92,011
2	INNSA1	Nhava Sheva	7,91,23,14,582	7,99,99,65,348	2,71,54,207
3	INENR1	Kamarajar	36,78,72,173	37,70,85,383	28,54,252
4	INMAA1	Chennai	51,05,26,776	51,96,28,689	28,19,773
5	INBOM4	ACC, Mumbai	1,24,93,47,990	1,25,70,46,122	23,84,881
6	INAMD4	ACC, Ahmedabad	47,61,30,400	47,99,33,134	11,78,087
7	INMAA4	ACC, Chennai	14,50,92,515	14,88,76,581	11,72,304
8	INVRM6	ICD Varnama	31,97,73,200	32,20,18,008	6,95,441
9	INHZA1	Hazira	31,97,73,200	32,20,03,618	6,90,984
10	INKAT1	Kattupalli	3,24,08,136	3,26,14,738	64,005
Total			43,52,98,73,222	43,86,84,97,965	10,49,05,945

4.11. For the past consignments imported through bills of entry as detailed in Annexure-A to this Show Cause Notice, the declared assessable value is Rs.43,52,98,73,222/-. The re-determined assessable value is Rs.43,86,84,97,965/-. **Therefore, the differential duty liability is Rs.10,49,05,945/-** on the value of

quantity of actual purity whose value is not considered in invoice as detailed in Annexure-A to this Show Cause Notice.

4.12. On the said differential duty, the interest is calculated from the date of bill of entry to the date of actual payment made during the course of investigation. The **total interest liability is Rs. 2,23,04,058/-**.

4.13. The Importer (FIPL) had changed their billing practice for their imported goods and thereby evaded payment of appropriate duty. They changed the basis of billing practice of the product from actual purity (actual concentration) to standard purity (fixed concentration) in respect of certain active ingredients in the product. Initially, the billing was done on the basis of the actual concentration of certain active ingredient in the product. However, later the practice was changed and billing was being done on the basis of a fixed concentration of certain active ingredient in the product. The fixed concentration of active ingredient chosen for the purpose of valuation was generally less than the actual concentration of active ingredient, which decreased the actual value of the imported product. Further the consignments imported in the past by FIPL as detailed in Annexure-A to the Show Cause Notice, were cleared by adopting method of invoicing where the goods were valued as per Standard Purity and not as per Actual Purity of active ingredient. Therefore, it appears that FIPL has suppressed the material fact resorting to mis-declaration in value i.e. under-valuation and cleared the goods without the applicable duty payment. From the facts and circumstances as detailed in Para: 4.1 to 4.12, it is felt that M/s FMC India Private Limited (FIPL) have violated Section 17 of the Customs Act, 1962, wherein it is envisaged that, an importer entering any goods under Section 46 of the Act, is bound to self-assess the duty, if any, leviable on such goods. The importer in the instant case, made an assessment of the duty of Customs by changing the billing practice which led to loss of revenue by way of Import Duties to the Government Exchequer. Had not the department initiated enquiry against the importer, the said act of suppression as discussed above on the part of importer in order to evade the duty of Customs liable to be deposited to the Government Exchequer would not have come to light and remained un-noticed. Hence, the extended period is invokable and the duty is liable to be recovered under the provisions of extended period in terms of Section 28 (4) of the Customs Act, 1962 along with interest in terms of Section 28AA of the Customs Act, 1962 apart from imposition of penalty.

4.14. The penalty @15% of the differential duty of Rs.10,49,05,945/- is Rs. 1,57,35,892/-. Hence, the **total penalty @15% of the differential duty is Rs.1,57,35,892/-** in terms of Section 28(5) of the Customs Act, 1962.

Voluntary payments made by M/s FMC India Private Limited during investigation:

4.15. During the course of investigation, M/s FMC India Private Limited has voluntarily paid the amount of Rs.14,29,46,526/- as determined by them towards their liability under Section 28 of the Customs Act, 1962 and the same are listed under **Table-06** below.

Table-06

Sr No	Challan No.	Challan Date	Amount (In Rs.)	Dema nd Draft/ Chequ e No.	Demand Draft/ Cheque Date	Amounts (In Rs.)	
						Amount (In Rs.)	Port of payment
1.	HC 85	08.09.20 22	9,24,34,2 75	20965 5	06.09.20 22	2,28,52,816	Nhava Sheva
2.				20965 6	06.09.20 22	3,82,83,517	Nhava Sheva
3.				20965 7	06.09.20 22	3,12,97,942	Nhava Sheva
4.	HCM 570	08.09.20 22	1,75,50,3 15	20965 8	06.09.20 22	75,57,986	Nhava Sheva

5.				20965 9	06.09.20 22	76,84,501	Nhava Sheva
6.				20966 0	06.09.20 22	23,07,828	Nhava Sheva
7.	MCM- 090952 96	09.09.20 22	13,47,728	20964 9	06.09.20 22	13,47,728	Chennai
8.	MCM- 090952 95	09.09.20 22	28,33,479	20965 0	06.09.20 22	28,33,479	Chennai
9.	MCM- 090952 97	09.09.20 22	3,14,317	20965 1	06.09.20 22	3,14,317	Chennai
10	MCM- 090952 98	09.09.20 22	4,53,616	20965 2	06.09.20 22	4,53,616	Chennai
11	MCM- 090952 99	09.09.20 22	4,84,873	20965 3	06.09.20 22	4,84,873	Chennai
12	MCM- 090953 00	09.09.20 22	20,505	20965 4	06.09.20 22	20,505	Chennai
13	2320	03.05.20 24	1,57,35,8 92	61388 9	30.04.20 24	1,57,35,892	Ahmedab ad
14	2318	03.05.20 24	17,85,613	61388 7	30.04.20 24	17,85,613	Ahmedab ad
15	2316	03.05.20 24	925	61388 5	30.04.20 24	925	Ahmedab ad
16	2319	03.05.20 24	19,41,954	61388 8	30.04.20 24	19,41,954	Ahmedab ad
17	2317	03.05.20 24	79,75,221	61388 6	30.04.20 24	79,75,221	Ahmedab ad
18	4110	31.07.20 24	67,813	61407 7	22.07.20 24	67,813	Ahmedab ad
Total amount voluntarily paid						14,29,46,5 26	

4.16. M/s FMC India Private Limited has provided the bifurcation of the voluntarily paid amount of Rs.14,29,46,526/- as determined by them towards their duty, interest and penalty liabilities under Section 28 of the Customs Act, 1962 and the same are listed under **Table-07** below:

Table-07

Amounts (In Rs.)

Sr. No.	Challan No.	Challan Date	Amount (In Rs.)	Port of payment	Paid in lieu of	RUD No.
1.	HC 85	08.09.2022	9,24,34,275	Nhava Sheva	Duty	4
2.	MCM- 09095296	09.09.2022	13,47,728	Chennai	Duty	5
3.	MCM- 09095295	09.09.2022	28,33,479	Chennai	Duty	6
4.	MCM- 09095297	09.09.2022	3,14,317	Chennai	Duty	7
5.	2316	03.05.2024	925	Ahmedabad	Duty	8
6.	2317	03.05.2024	79,75,221	Ahmedabad	Duty	9
Total amount paid in lieu of Duty			10,49,05,945			
7.	HCM 570	08.09.2022	1,75,50,315	Nhava Sheva	Interest	10
8.	MCM- 09095298	09.09.2022	4,53,616	Chennai	Interest	11
9.	MCM- 09095299	09.09.2022	4,84,873	Chennai	Interest	12
10.	MCM- 09095300	09.09.2022	20,505	Chennai	Interest	13
11.	2318	03.05.2024	17,85,613	Ahmedabad	Interest	14
12.	2319	03.05.2024	19,41,954	Ahmedabad	Interest	15
13.	4110	31.07.2024	67,813	Ahmedabad	Interest	16

	Total amount paid in lieu of Interest		2,23,04,689			
14.	2320	03.05.2024	1,57,35,892	Ahmedabad	Penalty	17
	Total amount paid in lieu of Penalty		1,57,35,892			
Total Amount Paid (Duty+Interest+Penalty)			14,29,46,526			

4.17. The Demand Drafts mentioned against the challans at Sr. No. 1 to 6 of **Table-06** above, were deposited at Nhava Sheva. However, the Chief Account Officer, Cash Section, JNCH vide letter File No. S/8 Gen-01/2021-22/ Cash JNCH dated 18.10.2022 informed that these Demand Drafts has been returned by RBI office with the remark 'Unable to scan cheque/system unable to capture cheque image' and copies of these Demand Drafts were returned for revalidation. Later, M/s FMC India Private Limited submitted new Demand Drafts vide letter dated 28.10.2022 as mentioned under **Table-08** below, which were submitted at Nhava Sheva for deposit. The Chief Account Officer, Cash Section, JNCH vide letter File No. S/8 Gen-01/2021-22/ Cash JNCH dated 31.10.2022 informed that these Demand Drafts are received with respect to same challan numbers as provided earlier i.e. HC-85/08.09.2022 and HCM-570/08.09.2022.

Table-08

Sr. No.	Old Demand Draft No.	Old Demand Draft Date	Amount (In Rs.)	New Demand Draft No.	New Demand Draft Date	Amount (In Rs.)	Port of payment
A. Challan No. HC 85 dated 08.09.2022 of Amount Rs.9,24,34,275/-							
a.	209655	06.09.2022	2,28,52,816	329821	28.10.2022	2,28,52,816	Nhava Sheva
b.	209656	06.09.2022	3,82,83,517	329826	28.10.2022	3,82,83,517	Nhava Sheva
c.	209657	06.09.2022	3,12,97,942	329825	28.10.2022	3,12,97,942	Nhava Sheva
TOTAL						9,24,34,275	
B. Challan No. HCM 570 dated 08.09.2022 of Amount Rs.1,75,50,315/-							
a.	209658	06.09.2022	75,57,986	329824	28.10.2022	75,57,986	Nhava Sheva
b.	209659	06.09.2022	76,84,501	329823	28.10.2022	76,84,501	Nhava Sheva
c.	209660	06.09.2022	23,07,828	329822	28.10.2022	23,07,828	Nhava Sheva
TOTAL						1,75,50,315	

Contraventions

5. Thus, from the evidence on record, statements of the various persons and legal position in the matter, as discussed above, it appears that:

5.1. The goods imported in past by M/s FMC India Private Limited vide bills of entry as detailed in Annexure-A to this Show Cause Notice, are liable for confiscation under Section 111(m) of the Customs Act, 1962, for making false entries in the Bills of Entry by mis-declaring the value of goods, as discussed from Para 4.1 to 4.4 above.

5.2. The declared assessable value of Rs.43,52,98,73,222/- of the goods imported vide bills of entry as detailed in Annexure-A to this Show Cause Notice, is liable to be rejected and the same is liable to be re-determined as Rs.43,86,84,97,965/- as detailed in Annexure-A to this Show Cause Notice, under the provisions of Section 14(1) of the Customs Act, 1962 read with Rule 3(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, and SVB IR No. 10/2019 dated 18.02.2019 as discussed from Para 4.1 to 4.4 above.

5.3. The differential duty amount of Rs.10,49,05,945/-, as detailed in Annexure-A to this Show Cause Notice, should be demanded and recovered from FIPL under the provisions of Section 28(4) of the Customs Act, 1962, along with appropriate interest under the provisions of Section 28AA, *ibid*.

5.4. The importer is liable for penalty under Section 112(a), Section 114A and Section 114AA of Customs Act, 1962, however the importer has paid penalty of Rs.1,57,35,892/- under Section 28(5) of the Customs Act, 1962, at the rate of 15% of the demand of differential duty amounting to Rs.10,49,05,945/- as detailed in Annexure-A.

5.5. The importer has voluntarily paid the total amount of Rs.14,29,46,526/- towards their liability under Section 28(5) of the Customs Act, 1962 during the investigation. Thus, the said amounts are liable to be appropriated against the demand of differential duty, interest and penalty as tabulated below:

Table-09

	VOLUNTARY PAYMENT DETAILS			DEMAND OF DUTY, INTEREST & PENALTY	
Sr. No.	Challan No.	Challan Date	Amount (In Rs.)	Type	Amount (In Rs.)
1.	HC 85	08.09.2022	9,24,34,275	Total Duty under Section 28 (4) of the Customs Act, 1962	10,49,05,945
2.	MCM-09095296	09.09.2022	13,47,728		
3.	MCM-09095295	09.09.2022	28,33,479		
4.	MCM-09095297	09.09.2022	3,14,317		
5.	2316	03.05.2024	925		
6.	2317	03.05.2024	79,75,221		
	Total		10,49,05,945		
7.	HCM 570	08.09.2022	1,75,50,315	Total Interest under Section 28AA of the Customs Act, 1962	2,23,04,689
8.	MCM-09095298	09.09.2022	4,53,616		
9.	MCM-09095299	09.09.2022	4,84,873		
10.	MCM-09095300	09.09.2022	20,505		
11.	2318	03.05.2024	17,85,613		
12.	2319	03.05.2024	19,41,954		
13.	4110	31.07.2024	67,813		
	Total		2,23,04,689		
14.	2320	03.05.2024	1,57,35,892	Total Penalty @15% of the duty under section 28(5) of the Customs Act, 1962	1,57,35,892
	Total		1,57,35,892		
Total Payment			14,29,46,526/-	Total Liabilities	14,29,46,526/-

- The voluntary payment made vide Challans No. (i) HC 85 dated 08.09.2022 of Rs.9,24,34,275/-; (ii) MCM-09095296 dated 09.09.2022 of Rs. 13,47,728/-; (iii) MCM-09095295 dated 09.09.2022 of Rs. 28,33,479/-; (iv) MCM-09095297 dated 09.09.2022 of Rs. 3,14,317/-; (v) 2316 dated 03.05.2022 of Rs. 925/- & (vi) 2317 dated 03.05.2022 of Rs. 79,75,221/-. On sum up the said challans, the amount comes out to Rs.10,49,05,945/-, which is liable to be appropriated against the demand of total differential duty amounting to Rs.10,49,05,945/-.
- The importer is liable for payment of the total interest of Rs.2,23,04,689/- as listed in Annexure-A. Hence, voluntary payment made vide Challan Nos. (i) HCM 570 dated 08.09.2022 of Rs. 1,75,50,315/-; (ii) MCM-09095298 dated

09.09.2022 of Rs. 4,53,616/-; (iii) MCM-09095299 dated 09.09.2022 of Challan No. 4,84,873/-; (iv) MCM-090952300 dated 09.09.2022 of Rs. 20,505/- (v) 2318 dated 03.05.2024 of Rs.17,85,613/-; (vi) 2319 dated 03.05.2024 of Rs. 19,41,954/- & (vii) 4110 dated 31.07.2024 of Rs. 67,813/- . On sum up the said challans, the total amount comes out to Rs.2,23,04,689/-, which is liable to be appropriated against the total applicable interest of Rs.2,23,04,689/-.

- iii. The voluntary payment made vide Challan No. 2320 dated 03.05.2024 of Rs. 1,57,35,892/- is liable to be appropriated against total penalty of Rs. 1,57,35,892/-.

6. In view of the above, Show Cause Notice No. VIII/10-12/ Pr.Commr/O&A/2024-25 dated 23.08.2024, was issued to M/s FMC India Private Limited (IEC No. 0300037830) having their registered office situated at TCG Financial Centre, 2nd Floor, Plot No. C 53, Block G, Bandra Kurla Complex, Bandra (East), Mumbai, Maharashtra-400098 calling upon them to Show Cause in writing to the Principal Commissioner of Customs, Ahmedabad having his Office at Custom House, Nr. All India Radio, Income Tax Circle, Navrangpura, Ahmedabad -380009, as to why:-

- (a) The declared assessable value of **Rs.43,52,98,73,222/- (Rupees Four Thousand Three Hundred Fifty Two Crore, Ninety Eight Lakh, Seventy Three Thousand, Two Hundred & Twenty Two only)** should not be rejected and the same should be re-determined having assessable value of **Rs.43,86,84,97,965/- (Rupees Four Thousand Three Hundred Eighty Six Crore, Eighty Four Lakh, Ninety Seven Thousand, Nine Hundred & Sixty Five only)** under the provisions of Section 14(1) of the Customs Act, 1962 read with Rule 3(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, and SVB IR No. 10/2019 dated 18.02.2019 as discussed from Para 4.1 to 4.4 above;
- (b) Subject goods having assessable value of **Rs.43,86,84,97,965/- (Rupees Four Thousand Three Hundred Eighty Six Crore, Eighty Four Lakh, Ninety Seven Thousand, Nine Hundred & Sixty Five only)** imported through Various Ports, shall not be held liable for confiscation under Section 111(m) of the Customs Act, 1962 for making false entries in the Bills of Entry by mis-declaring the value of goods, as discussed from Para 4.1 to 4.4 above;
- (c) The differential Customs Duty amounting to Rs. **10,49,05,945/- (Rupees Ten Crore, Forty Nine Lakh, Five Thousand, Nine Hundred & Forty Five only)** as mentioned in **Para:4.10 (Table-5)**, short paid by them on the said goods, should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962. The differential Customs Duty amounting to Rs.10,49,05,945/- (Rupees Ten Crore, Forty Nine Lakh, Five Thousand, Nine Hundred & Forty Five only) paid by them (as per details in Para: 5.5(i)) should not be appropriated against the above mentioned differential duty liability;
- (d) Interest should not be demanded and recovered from them under Section 28AA of the Customs Act, 1962 on the Customs Duty demanded at (a) above. The Interest amounting of **Rs. 2,23,04,689/- (Rupees Two Crore, Twenty Three Lakh, Four Thousand, Six Hundred & Eighty Nine only)** paid should not be appropriated towards the above mentioned Interest liability;
- (e) Penalty should not be imposed upon them under Section 112(a) of the Customs Act, 1962;
- (f) Penalty should not be imposed upon them under Section 114A of the Customs Act, 1962;
- (g) Penalty should not be imposed under Section 114AA of the Customs Act, 1962;

- (h) Penalty of Rs.1,57,35,892/- (Rupees One Crore, Fifty-Seven Lakh, Thirty Five Thousand, Eight Hundred & Ninety Two only) already paid should not be appropriated.

DEFENCE SUBMISSION:

7. The importer vide letter dated 04.09.2024 submitted that they had agreed with the points raised by the department and during the investigation, they have paid differential duty of Rs. 10,49,05,945/- along with interest of Rs. 2,23,04,689/- and Penalty@15% Rs. 1,57,35,892/-. Further, they have submitted that they have paid entire dues along with interest and penalty before the issuance of Show Cause Notice and amount thus paid has been examined and confirmed in the Show Cause Notice. They further requested that since they have paid all dues under Section 28(5) of Customs Act, 1962 the proceeding initiated against them are liable to be closed under Section 28(6) of Customs Act, 1962 and issue may be treated as closed with the provisions of the Customs Act, 1962 and further they confirmed that aforesaid amounts are paid voluntarily and they do not wish to litigate in future against the said payments and the amount thus paid may be duly appropriated as mentioned in the Show Cause Notice.

PERSONAL HEARING:

8. The importer vide letter dated 07.10.2024 reiterated that as they have already paid the duties along with interest and penalty, they do not require any personal hearing against the Show Cause Notice and requested to finalise the matter at an early date on the basis of records available with the office.

DISCUSSION AND FINDINGS:

9. I have carefully gone through the Show Cause Notice dtd. 23.08.2024 and written submission dtd. 03.09.2024 & 07.10.2024 made by the importer as well as compilation of statutory provisions. Further, the importer has requested to waive the opportunity of personal hearing.

9.1 I find that the present case came into light when on the basis of information, an enquiry was initiated against M/s. FMC India Private Limited, who were engaged in import of goods from its related party and have changed their billing practice of imported goods from actual purity (actual concentration) to standard purity (fixed concentration) in respect of certain active ingredients in the product and thus by resorting to undervaluation thereby, evading the applicable customs duty. The fixed concentration of active ingredient chosen for the purpose of valuation was generally less than the actual concentration of active ingredient, which decreased the actual value of the imported product which led to revenue loss. Thus, it appeared that M/s FMC India Private Limited was liable to pay the duty not paid/short paid under Section 28(4) of the Customs Act, 1962 (hereinafter referred to as "the Act") along-with applicable interest under Section 28AA of the Act. Further, it appeared that as the subject goods were imported by reason

of making false entries in the Bills of Entry by mis-declaring the value of goods, the subject goods were liable for confiscation under Section 111(m) of the Act and M/s. FMC India Private Limited had rendered themselves liable to applicable penalty under Section 112 (a), 114A and 114AA of the Act.

10. From the facts of the case and submissions of the FIPL, I have to decide whether the declared assessable value of Rs.43,52,98,73,222/- is liable to be rejected and re-determined at Rs.43,86,84,97,965/- and the importer is liable to pay the differential custom duty of Rs. 10,49,05,945/- (Rupees Ten Crore, Forty Nine Lakh, Five Thousand, Nine Hundred & Forty Five only) alongwith applicable interest of **Rs. 2,23,04,689/- (Rupees Two Crore, Twenty Three Lakh, Four Thousand, Six Hundred & Eighty Nine only)** in terms of Section 28AA of the Customs Act, 1962. I have also to decide whether the importer is liable for penalty under Section 112 (a), 114A & 114AA of the Customs Act, 1962 and the Impugned goods imported vide Bills of Entry as mentioned in Annexure-A to the Show Cause Notice having assessable value of **Rs.43,86,84,97,965/- (Rupees Four Thousand Three Hundred Eighty Six Crore, Eighty Four Lakh, Ninety Seven Thousand, Nine Hundred & Sixty Five only)** imported through Various Ports are liable to confiscation or otherwise.

11. From the facts and submission made by the importer, I note that the importer is engaged in the activity of import of various chemical and manufacturing of various insecticides and herbicides. The FIPL is importing all the chemicals from its related party situated outside India. For this purpose, they have submitted the pricing mechanism to the SVB, Bangalore. The FIPL submitted that the goods are supplied by the related foreign supplier on the basis of transfer price arrangement fixed annually on an agreed basis and it has no linkages on volume of import as it is same for whatever quantity imported. However, if there is any change in the method of invoicing, terms of relationship or any other material facts affecting the valuation of goods under the CVR, 2007 read with Section 14(1) of the Customs Act, 1962, the importer shall inform the same to the Special Valuation Branch immediately so as to enable the review of the decision in force. They have submitted Transfer Pricing (TP) Price List for the year 2019 to 2023 as listed under Table-03 in para 4.3 above.

11.1 I note that the importer has imported various chemicals into India to be used in manufacturing of various insecticides and herbicides vide various Bills of Entry during the period 2019 to 2023 as mentioned in Annexure A to the Show Cause Notice. I also note that the Importer has changed the basis of billing practice of their product from actual purity (actual concentration) to standard purity (fixed concentration) in respect of certain active ingredients in the product. Initially, the billing was done on the basis of the actual concentration of certain active ingredient in the product. However, later the practice was changed and billing was being done on the basis of a fixed concentration of certain active ingredient in the product. The fixed concentration of active ingredient chosen for the purpose of valuation was generally less than the actual concentration of active ingredient, which decreased the actual value of the imported product.

11.2 I note that the Importer's act of discontinuation of the practice of fixing the price based on actual purity and changing the transfer pricing rates as fixed concentration per unit without considering the actual purity of the active ingredient/ingredients is in contravention to their submission at the time of investigation by SVB and final SVB order.

11.3 From the illustration mentioned in the **Table-04** of para 4.4.3 above, I note that there is a difference of Rs. 23,52,441/- in the assessable value of the product as per actual purity and as per standard purity. The assessable value of the product as per standard purity is less than the assessable value as per actual purity.

11.4 I note that by declaring the value of goods on standard pricing rather than on the basis of actual concentration of chemicals in their Bill of Entry during the period of 2019 to 2023 has resulted in undervaluation of the products imported by them. The undervaluation of the product has resulted in short payment of duty on the goods imported into India by the importer. Further, the DRI alleged that the Transaction Value of the consignments imported in the name of FIPL, declared in respective bills of entry and as detailed in Annexure-A to the Show Cause Notice, are mis-declared, and is required to be ascertained under the provisions of Section 14(1) of the Customs Act, 1962 read with provisions of Rule 3(1) of the CVR, 2007.

11.5 I further note that the correct Transaction Value of the consignments, as detailed in Annexure-A to the Show Cause Notice, for the purpose of Section 14(1) of the Customs Act, 1962 read with provisions of Rule 3(1) of the CVR, 2007, is as per Actual Purity of active ingredient of the product and not as per Standard Purity. The DRI has by adopting the methodology as illustrated above under Table-04 has re-determined the transaction value as per Actual Purity of active ingredient of the product and that is the value for the determination of actual assessable value of goods imported. It also appears that for the past consignments imported through bills of entry as detailed in Annexure-A to the Show Cause Notice, the importer has mis-declared assessable value of goods as Rs.43,52,98,73,222/-, however, the re-determined assessable value was Rs.43,86,84,97,965/-. I find that the differential duty liability on differential assessable value amounting Rs. 33,86,24,743/- was calculated as Rs.10,49,05,945/- based on the value of quantity of actual purity whose value was not considered in invoice as detailed in Annexure-A to the Show Cause Notice and the same was demanded from the importer under the provisions of Section 28(4) of the Customs Act, 1962, along with appropriate interest under the provisions of Section 28AA, *ibid*.

11.6 I note that as per Section 17 of the Customs Act, 1962, wherein it is envisaged that, an importer entering any goods under Section 46 of the Act, is bound to self-assess the duty, if any, leviable on such goods. I further note that the importer in the instant case, made an assessment of the duty of Customs by changing the billing practice which led to loss of revenue by way of lesser payment of Import Duties to the Government Exchequer. Had the department not initiated enquiry against the importer, the said act

of suppression on the part of importer to evade the duty of Customs liable to be deposited to the Government Exchequer would not have come to light and remained unnoticed. Hence, I hold that the extended period is rightly invoked and the duty is liable to be recovered under the provisions of extended period in terms of Section 28 (4) of the Customs Act, 1962 along with interest in terms of Section 28AA of the Customs Act, 1962 apart from imposition of penalty.

11.7 I find that on being pointed about the differential duty liability of Rs. 10,49,05,945/-, the importer agreed to the objection of the DRI and voluntarily paid the differential duty amounting to Rs. 10,49,05,945/- during investigation and same is liable to be appropriated against the demand of differential duty under Section 28 (4) of the Customs Act, 1962.

11.8 I find that on the above differential duty of Rs. 10,49,05,945/-, the importer has also paid interest amounting to Rs. 2,23,04,058/- voluntarily during investigation and amount thus paid is liable to be appropriated against the demand of interest under the provisions of Section 28AA of the Customs Act, 1962.

11.9 I find that the Importer has already paid the penalty amounting to Rs. 1,57,35,892/- (15% of differential duty amount of Rs. 10,49,05,945/-) voluntarily and same is liable to be appropriated against the penalty in terms of Section 28(5) of the Customs Act, 1962.

12 I find that in reply to the Show Cause Notice dated 23.08.2024, the importer vide their letter dated 04.09.2024 and 07.10.2024 submitted that they had agreed with the contention raised by the department and before issuance of show cause notice i.e. during the investigation, they have paid differential duty of Rs. 10,49,05,945/- along with interest of Rs. 2,23,04,058/- and penalty of Rs. 1,57,35,892/- (15% of differential duty amount of Rs. 10,49,05,945/-). They further submitted that they have voluntarily made the payment of differential duty along with interest and penalty as specified in section 28(5) of Customs Act, 1962 and they do not want any further litigation in this matter. I note that the importer also requested to close the proceedings by issuance of appropriate order as provided under Section 28(6) of the Customs Act, 1962. Summary of the payment made by the importer is tabulated as under:

Details of payment made by M/s FMC India Private Limited

Amounts (In Rs.)						
Sr. No.	Challan No.	Challan Date	Amount (In Rs.)	Port of payment	Paid in lieu of	RUD No.
1.	HC 85	08.09.2022	9,24,34,275	Nhava Sheva	Duty	4
2.	MCM- 09095296	09.09.2022	13,47,728	Chennai	Duty	5
3.	MCM- 09095295	09.09.2022	28,33,479	Chennai	Duty	6
4.	MCM- 09095297	09.09.2022	3,14,317	Chennai	Duty	7
5.	2316	03.05.2024	925	Ahmedabad	Duty	8
6.	2317	03.05.2024	79,75,221	Ahmedabad	Duty	9
	Total amount paid in lieu of Duty		10,49,05,945			
7.	HCM 570	08.09.2022	1,75,50,315	Nhava Sheva	Interest	10

8.	MCM- 09095298	09.09.2022	4,53,616	Chennai	Interest	11
9.	MCM- 09095299	09.09.2022	4,84,873	Chennai	Interest	12
10.	MCM- 09095300	09.09.2022	20,505	Chennai	Interest	13
11.	2318	03.05.2024	17,85,613	Ahmedabad	Interest	14
12.	2319	03.05.2024	19,41,954	Ahmedabad	Interest	15
13.	4110	31.07.2024	67,813	Ahmedabad	Interest	16
	Total amount paid in lieu of Interest		2,23,04,689			
14.	2320	03.05.2024	1,57,35,892	Ahmedabad	Penalty	17
	Total amount paid in lieu of Penalty		1,57,35,892			
	Total Amount Paid (Duty+Interest+Penalty)		14,29,46,526			

13. I find that in the instant case, Show Cause Notice was issued to the importer, M/s FMC India Private Limited, for the demand of differential duty under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA, and for imposition of penalties under Sections 112 (a), 114A, and 114AA of the Customs Act, 1962. Additionally, the goods imported were proposed to be confiscated under Section 111(m) of the Customs Act, 1962, with a corresponding penalty under Section 112 (a) of the Act, on the grounds that the importer had misdeclared the assessable value of the imported goods, resulting in short payment of customs duty for several Bills of Entry filed during the period from 2019 to 2023. The importer, however, has already accepted the re-determined assessable value of **Rs.43,86,84,97,965/-** and acknowledged that the differential duty arose due to a technical issue related to a change in their billing system. During the investigation, and prior to the issuance of the Show Cause Notice dated 23 August 2024, the importer voluntarily paid the differential duty of Rs. 10,49,05,945/-, along with the applicable interest of Rs. 2,23,04,058/- and a penalty of Rs. 1,57,35,892/- (15% of differential duty amount of Rs.10,49,05,945/-), I find that proceeding initiated vide Show Cause Notice No. VIII/10-12/ Pr. Commr/O&A/2024-25 dated 23.08.2024 needs to be concluded in terms of the provision of Section 28 (6) (i) of the Customs Act, 1962 without prejudice to the provisions of Section 135, 135A and 140 of the Customs Act, 1962.

13.1 I find that once the goods are held liable for confiscation, penalty under Section 112 of the Customs Act, 1962 are attracted. Penal provisions under Section 112 of the Customs Act, 1962 in the case of dutiable goods, other than prohibited goods are subject to the provisions of Section 114A of the Customs Act, 1962 and as per fifth proviso to Section 114A of the Customs Act, 1962, where any penalty has been levied under Section 114A, no penalty shall be concurrently levied under Section 112 of the Customs Act, 1962. In the present matter, the differential customs duty amounting to ₹10,49,05,945/- in relation to the imported goods, which bear a total differential assessable value of ₹33,86,24,743/-, has been duly demanded and confirmed under the provisions of Section 28(4) of the Customs Act, 1962. This is to be levied alongside the applicable interest under Section 28AA and the imposition of penalties under Section 114A of the Act. Consequently, the invocation of penal action under Section 112 (a) of the Customs Act, 1962, becomes inapplicable and non-invocable in the present circumstances. Additionally, the importer has voluntarily discharged the differential

duty liability, along with the accrued interest and a penalty quantified at 15% of the duty, as delineated in the Show Cause Notice, prior to its formal issuance. In view of the entire factual matrix stated above, I find that the proceeding against the importer under Section 28 (4), 28AA, Section 111(m), Section 112 (a), Section 114A and 114AA of the Customs Act, 1962 are deemed to be conclusive as per the provision of Section 28 (6) (i) of the Customs Act, 1962.

13.2 Regarding the issue of fine in lieu of confiscation, I find that as per Section 125 (1) of the Customs Act, 1962, it is mandatory for the officer adjudging confiscation of the goods, other than the goods the importation or exportation whereof is prohibited under the Customs Act, 1962 or under any other law for the time being in force, to give to the owner of goods, or where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit. However, first proviso to Section 125 (1) of the Customs Act, 1962 provides that where the proceeding are deemed to be concluded under provision to sub-section (2) of Section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, no such fine shall be imposed. From the DRI letter dated 11.11.2024 issued from F.No. DRI/MZU/F/INT-75/ENQ-69/2022, I note that M/s FMC India has valid Certificate of Registration issued by the CIB & RC (Central Insecticide Board & Registration Committee) to import the impugned goods. Thus, in the present case, I find that the goods having assessable value of Rs. 43,86,84,97,965/- held liable for confiscation is neither prohibited nor restricted and the proceedings are deemed to be concluded under Section 28 (6)(i) of the Customs Act, 1962 and therefore, I am not inclined to impose any fine in lieu of confiscation.

14. In view of the foregoing discussion and findings, I pass the following order.

::ORDER::

14.1 M/s FMC India Private Limited (IEC No. 0300037830) having their registered office situated at TCG Financial Centre, 2nd Floor, Plot No. C 53, Block G, Bandra Kurla Complex, Bandra (East), Mumbai, Maharashtra- 400098 has declared assessable value of **Rs. 43,52,98,73,222/- (Rupees Four Thousand Three Hundred Fifty Two Crore, Ninety Eight Lakh, Seventy Three Thousand, Two Hundred & Twenty Two only)** for goods imported by them vide various bill of entries during 2019 to 2023. I order to reject the value assessed by the importer and confirm the re-determined assessable value of **Rs.43,86,84,97,965/- (Rupees Four Thousand Three Hundred Eighty Six Crore, Eighty Four Lakh, Ninety Seven Thousand, Nine Hundred & Sixty Five only)** under the provisions of Section 14(1) of the Customs Act, 1962 read with Rule 3(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, and SVB IR No. 10/2019 dated 18.02.2019.

14.2 M/s FMC India Private Limited has already paid the differential duty alongwith interest demanded under Section 28 (4) and Section 28AA, respectively of the Customs Act, 1962 vide the Show Cause Notice No. VIII/10-12/Pr.Commr/O&A/2024-25 dated 23.08.2024 and they have also paid the penalty equal to fifteen percent of the duty demanded in the notice as provided under Section 28 (5) of the Customs Act, 1962. I order to confirm the demand of duty and interest demanded in the said Show Cause Notice and order to

appropriate the total amount of **Rs. 14,29,46,526/-** (Rupees Fourteen Crore, Twenty Nine lakhs, Forty Six Thousand, Five Hundred and Twenty Six only) paid by the importer against **duty of Rs. 10,49,05,945/-**, **Interest of Rs. 2,23,04,689/-** and **Penalty of Rs. 1,57,35,892/-**. Hence, the proceeding in respect of Show Cause Notice No. VIII/10-10-12/Pr.Commr/O&A/2024-25 dated 23.08.2024 is hereby treated as concluded in terms of the provision of Section 28 (6)(i) of the Customs Act, 1962 without prejudice to the provisions of Section 135, 135A and 140 of the Customs Act, 1962.

14.3 I hold that the imported subjected goods having assessable value of **Rs.43,86,84,97,965/-** imported through Various Ports vide various Bill of Entry are liable for confiscation under Section 111 (m) of the Customs Act, 1962. However, in view of the first Proviso to Section 125 (1) of the Customs Act, 1962 and deemed conclusion of the proceeding under Section 28 (6) (i) of the Customs Act, 1962, I do not impose any fine in lieu of confiscation under Section 125 (1) of the Customs Act, 1962.

14.4 I refrain from imposing any penalty on M/s. FMC India Private Limited under Section 112(a) of the Customs Act, 1962;

14.5 I refrain from imposing any penalty on M/s. FMC India Private Limited under Section 114AA of the Customs Act, 1962.

15. This order is issued without prejudice to any other action that may be taken under the provisions of the Customs Act, 1962 and Rules/Regulations framed thereunder or any other law for the time being in force in the Republic of India.

16. The Show Cause Notice No. VIII/10-12/Pr.Commr/O&A/2024-25 dated 23.08.2024 is disposed off in above terms.

sl
20.11.2024

(Shiv Kumar Sharma)
Principal Commissioner,
Customs, Ahmedabad

F. No. VIII/10-12/Pr.Commr/O&A/2024-25

Date: 20.11.2024

DIN: 20241171MN000000D0F8

BY SPEED POST A.D.

To,

M/s FMC India Private Limited
TCG Financial Centre, 2nd Floor,
Plot No. C 53, Block G,
Bandra Kurla Complex, Bandra (East),
Mumbai, Maharashtra- 400098.

Copy To:

1. The Chief Commissioner of Customs, Gujarat Customs Zone, Ahmedabad
2. The Additional Director General, Directorate of Revenue Intelligence, Mumbai Zonal Unit, Mumbai,
3. The Deputy/ Assistant Commissioner, HQ Systems, Customs Ahmedabad, for uploading on the official website;
4. The Deputy/ Assistant Commissioner, HQ Recovery Cell, Customs Ahmedabad,
5. Guard File.